

1 MARK P MEUSER, (SBN 231335)
2 PO Box 5412
3 Walnut Creek, CA 94596
4 Telephone: (415) 577-2850
5 Facsimile: (925) 262-2318
6 e-mail: mpm@markmeuser.com

7 Attorney for Defendant
8 Larry Nolan, Garry Birch, and Jason Sage

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 CORNEALIUS LOPES,

13 Plaintiff,

14 Vs.

15 FREEMONT FREEWHEELERS, et al.,

16 Defendants.

Case No.: C 07-6213 PJH

DEFENDANTS' GARRY BIRCH AND
JASON SAGE'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
THEIR MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6)

Date: June 25, 2008

Time: 9:00am

Dept.: Courtroom 3, 17th Floor

Judge: Phyllis J. Hamilton

20 Defendants and Moving Parties Garry Birch and Jason Sage Requests the Court to
21 take judicial notice of the attached documents:

- 22 1. Warrant filed on July 15, 2004 entitled People of the State of California v.
23 Neal Lopes, Alameda County Superior Court case number 209109-1.
24 (Exhibit A).
- 25 2. Clerks docket and minutes of October 12, 2005 where the court granted
26 dismissal of charges in the case of the People v. Lopes. (Exhibit B).
- 27
- 28

- 1 3. Memorandum and Order dated June 25, 2007 entitled Cornelius Lopes v.
2 Joseph Dale Wren, et al., United States District Court for the Northern
3 District of California, case number C 06-03705 CRB. (Exhibit C).
- 4 4. Complaint filed on Marcy 16, 2006 entitled Lopes v. Freemont
5 Freewheelers, et. al. Alameda County Superior Court Action Number
6 HG06260161. (Exhibit D).
- 7 5. Judgment on jury verdict filed on July 24, 2007 entitled Lopes v.
8 Freemont Freewheelers, et. al. Alameda County Superior Court Action
9 Number HG06260161. (Exhibit E).

10 Dated: May 20, 2008

11 by: /s/ Mark P. Meuser

12 Mark P Meuser (SBN 231335)
13 PO Box 5412
14 Walnut Creek, CA 94596
15 (415) 577-2850 – Telephone
16 mpm@markmeuser.com

17 Attorney for Defendants Larry Nolan, Garry Birch,
18 and Jason Sage
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Exhibit A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
FREMONT HALL OF JUSTICE

FILED
ALAMEDA COUNTY

PEOPLE OF THE STATE OF CALIFORNIA

NO. 209109-1

JUL 16 2004

COMPLAINT

CLERK OF THE SUPERIOR COURT

V.

By J. W. [Signature] Deputy

NEAL LOPES

PFN: DPH278 CEN: 4267588

WARRANT

Defendant(s).

The Undersigned, being sworn says, on Information and belief, that NEAL LOPES did, in the County of Alameda, State of California, on or about June 12, 2004, commit a Misdemeanor, to wit: BATTERY, a violation of section 242 of the PENAL CODE of California, in that said defendant(s) did willfully and unlawfully use force and violence upon the person of LLOYD RATH.

SECOND COUNT

The Undersigned further deposes and says on Information and belief, that said NEAL LOPES did, in the County of Alameda, State of California, on or about June 12, 2004, commit a Misdemeanor, to wit: BATTERY, a violation of section 242 of the PENAL CODE of California, in that said defendant(s) did willfully and unlawfully use force and violence upon the person of BOB PARKER.

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.

Complainant therefore prays that a warrant issue and that said defendant(s) be dealt with according to law.

Subscribed and sworn to before me,
Thursday, July 15, 2004

1/s/ Newark PD-04-3845

LISA M. FARIA
Deputy District Attorney
State Bar #85555 dm
Alameda County, California

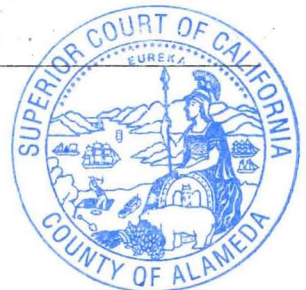


Exhibit B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

DOCKET NAME: LOPES, NEAL DEPT. 607 CRT. DATE/TIME 10/12/05 10:00
 EVENT NAME: SET COUNTS RPT. NO. NPD04-3845 DOCK NO. 209109
 CEN. 4267588 PFN. ARA413 A DAY 08/09/04 SJ DATE 4/20/06
 CHARGES 1) M242 PC 2) M242 PC
 STAT OR BAIL TOTAL DAYS IN CUSTODY: 1
 BAIL STAT. BOND DT. BOND CO. DOB 09/11/66
 BAIL STAT. BOND DT. BOND CO. TW BAC
 FINE/REST. DATE PAID REC. NO. TIME WAIVED

PROCEEDING

DCCO:

JUDGE: KELLER LEE/SILVA DEP. D.A. CAHNERS
 DEP. CLERK: CRUZ/HOYT/KEEPER/MAGALEI/ROOPE DEF. ATTY. ☐ Not Present
 REPORTER OTHERS

Defendant: ☐ Present ☒ Not Present ☐ Excused ☐ In Custody ☐ Pro Per
☐ Interpreter is present. Language spoken: _____
☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed
☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)
☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed
☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty
☐ Stipulates to: lesser included / reasonably related offense of count(s) _____ to charge(s) _____
☐ Time waived for: ☐ Preliminary Examination _____ days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn
☐ **Clauses:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only
☐ **Priors:** ☐ Stricken ☐ Admitted ☐ Denied
☐ **Probation:** ☐ **Conditional Sentence:** ☐ Granted for _____ years/months ☐ See attached conditions
☐ Revoked ☐ Restored ☐ Modified ☐ Extended to _____ ☐ Continue on same terms and conditions ☐ Terminated
☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation
☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control _____
☐ No contact with / not to annoy _____ directly or indirectly: stay at least _____ away
☐ Additional order(s): *Prior Motion to dismiss*
☐ Petition/Motion ☒ Granted ☐ Denied ☐ Withdrawn
☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ _____
Restitution: ☐ Referred to _____ for Determination ☐ Ordered ☐ Reserved ☐ Modified
☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered
☐ **Bench Warrant:** ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ _____ ☐ No Cite Release ☐ Night Service

*Blue's minutes - all exhibits are withdrawn + returned to respective parties
 P.O. terminated - info scanned 10/19/05
 exhibits counts
 withdrawn AA, BB + CC
 are returned to file*

FUTURE COURT DATES: 9/09/08 POCD VT

ont: Date: _____ Time: _____ Dept. _____ P _____ Time: _____ Dept. _____ Proc.: _____
 ORPUS Codes: _____



DOCKET NAME: LOPES, NEAL CT. DATE: 10/12/05 DOCK NO. 209109

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CORNELIUS LOPES,

No. C 06-03705 CRB

Plaintiff,

MEMORANDUM AND ORDER

v.

JOSEPH DALE WREN, et al.,

Defendants.

While jogging one morning in June 2004, plaintiff collided with a bicyclist participating in a bicycle race in Newark, California. A few weeks later plaintiff was arrested for intentionally causing the accident, although he was never convicted of the charges. In this section 1983 action, plaintiff, proceeding pro se, challenges his arrest. The Court has previously dismissed plaintiff's claims against the District Attorney defendants. Now pending before the Court is the motion for summary judgment of the police officer and City defendants: Officer Joseph Daly Wren, Officer Badge 56, City of Newark and Newark Police Department. After carefully considering the papers and evidence filed by the parties, and having had the benefit of oral argument, defendants' motion for summary judgment is GRANTED.

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FACTUAL BACKGROUND

At approximately 8:20 a.m. on June 12, 2004, Newark Police Officers Joseph Wren (“Officer Wren”) and Farley were dispatched to investigate an accident involving a pedestrian and a bicyclist at the Eureka Circle Course in Newark, California. When Officer Wren arrived at the scene, he noticed that the roadway had been closed for a bicycle race. Officer Wren noticed that plaintiff Cornelius Lopes, with a mangled face, was sitting on the curb. Lopes told Officer Wren that he was confused about what had happened, but confirmed that he had been running in the roadway in the opposite direction of the bicycle racers. Lopes made no other statements to Officer Wren and was eventually transported by ambulance to Washington Hospital. Prior to this incident, Officer Wren had never met nor heard of plaintiff Lopes.

Officer Wren spoke to various witnesses at the scene. Byron Sheppard reported that he had been directly behind the bicyclist that collided with Lopes and that he had observed Lopes run directly into the group of bicyclists and hold his right arm out to the side, level to the ground, and strike the bicyclist in the middle of the chest. Officer Wren also spoke with bicyclist Bob Parker, the bicyclist that collided with Lopes. Parker stated that he did not see Lopes prior to the accident. Another bicyclist who was involved in the accident did not see or hear what caused the collision.

Officer Wren also spoke with Jason Sage. Sage reported that Lopes had been warned to stay off the roadway and that Sage had been told that on one occasion Lopes had responded something to the effect of “F__ You Jew.”

The next day Officer Wren spoke with Lopes. Lopes denied that he had warned him to stay off the course. He also denied that he had argued with any of the bicyclists or stuck his arm out while jogging to interfere with the bicyclists. Later that day, Lopes faxed a written statement to Officer Wren.

According to Officer Farley’s police report, upon his arrival at the scene Officer Farley spoke with witness Peter Rosa. Rosa reported that Lopes had intentionally collided with the bicyclists.

1 On June 14, 2004, Officer Wren prepared a written police report that included the
2 above information, as well as Lopes' written statement. Officer Wren concluded that the
3 report should be sent to the Alameda County District Attorney for review and filing of "PC
4 242" (battery) charges against Lopes. Officer Wren concluded: "Victims, Parker and Rath
5 believe this Act was intentional on Lopes behalf. They requested that a report covering the
6 details of this incident be sent to the DA's office."

7 The District Attorneys' Office subsequently asked the Newark Police Department to
8 obtain further information. In connection with this further investigation, witness Jason Sage
9 sent Officer Wren additional written witness statements and a CD. Several of the witnesses
10 asserted in their written statements that they had told Lopes to exit the bicycle course. In
11 addition, witness Tim O'Hara asserted that when he politely asked Lopes to leave the course,
12 Lopes responded: "F___ You, Jew." Officer Wren submitted both the written statements and
13 the CD to the District Attorney's Office.

14 On July 6, 2004, the District Attorney's Office asked Officer Wren to locate the
15 bicyclist that had collided with Lopes. Officer Wren produced a second supplemental report
16 identifying Bob Parker as the struck bicyclist. Officer Wren's submission of the
17 supplemental report ended his participation in the case. He never met nor spoke with any
18 District Attorney's Office representative concerning whether to file charges against Lopes or
19 issue an arrest warrant.

20 On July 15, 2004, Alameda County Deputy District Attorney Lisa Faria asked Newark
21 Police Sergeant Robert Douglas to author a "Declaration in Support of Arrest and/or Issuance
22 of Warrant of Arrest" ("Declaration") to accompany the District Attorney's criminal
23 complaint for an arrest warrant against Lopes. Prior to the request from Faria, Sergeant
24 Douglas had never met nor spoken with a representative of the District Attorney's Office
25 concerning whether to file charges against Lopes. Sergeant Douglas read the criminal
26 complaint and Officer Wren's police report with supplements and concurred that probable
27 cause existed to arrest Lopes. Accordingly, he prepared and signed the Declaration. Once he
28 submitted the Declaration, his involvement with Lopes' case ended.

1 On July 16, 2004, a criminal complaint and arrest warrant were issued charging Lopes
2 with misdemeanor battery arising from the June 12, 2004 collision. Lopes was not convicted
3 of the charges.

4 PROCEDURAL HISTORY

5 Lopes, proceeding pro se, subsequently filed this section 1983 action against certain
6 Alameda County District Attorney's Office defendants, as well as Officer Wren, the City of
7 Newark, the Newark Police Department and the Newark Police Union. Upon the filing of a
8 motion to dismiss, the Court dismissed the claims against the District Attorney defendants on
9 the ground of absolute prosecutorial immunity and failure to state a claim.

10 The remaining served defendants have now moved for summary judgment. As
11 plaintiff is proceeding without the benefit of a lawyer it is difficult to discern the exact nature
12 of his claims. In his "Amended Motion for Plaintiffs' Memorandum of Points and
13 Authorities In Support of Motion for Summary Judgment" filed June 8, 2007, which the
14 Court considers as an opposition to defendants' motion, plaintiff identifies several "claims."

15 In "Claim 1" Lopes appears to contend that Officer Wren's inclusion of the "F____
16 You, Jew" statement in his police report violates the Establishment Clause. Plaintiff's June 8,
17 2007 Memorandum ("Plaintiff's Memorandum") at p. 1. "Claim 2" contends that Wren
18 conspired with others to obtain plaintiff's arrest warrant without probable cause. Id. at 8. In
19 "Claim 3" Lopes alleges that Officer "Wren recklessly published false information of a crime
20 and put it into judicial records with disregard for its truth and falsity that the plaintiff had
21 struck a cyclist." Id. at 12. Plaintiff's opposition identifies his claim 4 as "Count 4." Count
22 4 contends that his due process rights were violated because the CD Officer Wren received
23 included photographs that showed that plaintiff had not committed battery. In Count 5 he
24 contends that Officer Badge #56 "negligently prepared and signed his signature to the
25 Declaration in Support of Arrest." Id. at 20. Plaintiff must be referring to Sergeant Douglas
26 who signed the Declaration, although Sergeant Douglas does not carry Badge #56. Claim 7
27 and claim 10 allege that the Newark Police Department and the City of Newark negligently
28 trained Officer Wren and Sergeant Douglas (erroneously referred to as Badge #56). Claims 8

and 9 are omitted from the opposition; these may be the dismissed claims against the prosecutors.

SUMMARY JUDGMENT STANDARD

A principal purpose of the summary judgment procedure is to isolate and dispose of factually unsupported claims. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). A party moving for summary judgment that does not have the ultimate burden of persuasion at trial (usually the defendant) has the initial burden of producing evidence negating an essential element of the non-moving party's claims *or* showing that the non-moving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial. Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000).

If the moving party does not satisfy its initial burden, the non-moving party has no obligation to produce anything and summary judgment must be denied. If, on the other hand, the moving party has satisfied its initial burden of production, then the non-moving party may not rest upon mere allegations or denials of the adverse party's evidence, but instead must produce admissible evidence that shows there is a genuine issue of material fact for trial. Nissan Fire & Marine Ins. Co., 210 F.3d at 1102. A genuine issue of fact is one that could reasonably be resolved in favor of either party. A dispute is "material" only if it could affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986).

At the case management conference held on January 12, 2007, the Court gave plaintiff a copy of the pro se litigant's summary judgment warning. The warning specifically advised plaintiff of his burden in responding to a motion for summary judgment.

DISCUSSION

A. Establishment Clause Claim (Claim 1)

Plaintiff's Establishment Clause claim fails as a matter of law. First, it appears to be a new claim and plaintiff has not and will not be given leave to file a Fifth Amended Complaint. Second, it fails as a factual matter as there is no dispute that Officer Wren was

1 told that plaintiff had used the contested phrase. Third, even if Lopes never uttered the
2 challenged phrase, including the statement in Officer Wren's police report does not violate
3 the Establishment Clause as a matter of law.

4 **B. Conspiracy to obtain warrant without probable cause (Claim 2)**
5 **Due process (Count 4)**
6 **Negligent preparation of declaration in support of warrant (Count 5)**

7 Claim 2, Count 4 and Count 5 all derive from plaintiff's contention that there was not
8 probable cause to charge him with misdemeanor battery. Plaintiff's claims fail as a matter of
9 law because it is undisputed that the District Attorney filed misdemeanor battery charges
10 against plaintiff. As the Ninth Circuit has explained:

11 Ordinarily, the decision to file a criminal complaint is presumed to result from
12 an independent determination on the part of the prosecutor, and thus, precludes
13 liability for those who participated in the investigation or filed a report that
14 resulted in the initiation of proceedings. However, the presumption of
15 prosecutorial independence does not bar a subsequent § 1983 claim against
16 state or local officials *who improperly exerted pressure on the prosecutor, knowingly provided misinformation to him, concealed exculpatory evidence, or otherwise engaged in wrongful or bad faith conduct that was actively instrumental in causing the initiation of legal proceedings.*

17 Awaby v. Adelanto, 368 F.3d 1062, 1067 (9th Cir. 2004) (emphasis added).

18 Plaintiff offers no evidence whatsoever that Officer Wren, Sergeant Douglas, or any
19 member of the Newark Police Department exerted any pressure, let alone improper pressure,
20 on the prosecutor. Nor is there any evidence from which a reasonable jury could find that
21 Officer Wren or Sergeant Douglas knowingly provided false information to prosecutors or
22 concealed exculpatory evidence; to the contrary, the undisputed evidence is that Officer
23 Wren's police report accurately reflects what he was told during his investigation. In
24 addition, the evidence is undisputed that Officer Wren provided the allegedly exculpatory
25 CD to the District Attorney's Office. Plaintiff also offers no evidence to support his apparent
26 contention that the police officers conspired with private parties to deprive him of his due
27 process rights. Accordingly, defendants are entitled to judgment on the above claims.

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C. Publishing false information in the police report and judicial records (Claim 3)

Plaintiff's "libel in public documents" claim, to the extent it differs from his due process claim, also fails as a matter of law. First, there is no evidence that the police officer defendants knowingly included any false information in their reports or the Declaration.

Second, "[i]n order to maintain a cognizable § 1983 claim based on defamation, a plaintiff must demonstrate the loss of a property or liberty interest rooted in the constitution in conjunction with injury to reputation." Crowe v. County of San Diego, 303 F.Supp.2d 1050, 1111 (S.D. Cal. 2004). "As the Ninth Circuit has explained, a § 1983 claim for defamation-plus may be proved either by demonstrating that the plaintiff suffered an injury to reputation that was inflicted in connection with the violation of a federally protected right or by demonstrating that the plaintiff's injury to reputation caused the denial of a federally protected right." Id. (citation omitted). Plaintiff has identified neither, let alone produce evidence that would support a finding by a reasonable jury that he had suffered such an injury.

D. Negligent training claims

Since plaintiff's claims against the police officers fail, it follows that his claims against the City of Newark and the Newark Police Department for negligent training of the officers also fail. Moreover, plaintiff offers no evidence as to the training provided and does not even explain what training the officers should have received.

E. Police union defendant

Plaintiff also named the "Newark Police Union" as a defendant and has recently filed a motion for summary judgment. Plaintiff claims that the Union has violated the Establishment Clause. As the Union is not a government entity, the Establishment Clause does not apply as a matter of law; accordingly, the Court will dismiss the claims against the Union with prejudice.

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CONCLUSION

For the reasons stated above, defendants' motion for summary judgment on all of the claims against them is GRANTED. In addition, the claims against the Police Union are dismissed with prejudice.

IT IS SO ORDERED.

Dated: June 25, 2007



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

A0264

Exhibit D



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Patricia A. Turnage SBN 127873 Law Offices of Patricia Turnage 1260 "B" Street, Suite 140 Hayward, CA 94541 TELEPHONE NO: 510-727-6752 FAX NO. (Optional): 510-727-6751 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Cornealius Lopes, Teresa Lopes		FILED ALAMEDA COUNTY MAR 16 2006 CLERK OF THE SUPERIOR COURT By <u>Michele R</u> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 24405 Amador Street MAILING ADDRESS: CITY AND ZIP CODE: Hayward, 94544 BRANCH NAME: Superior Court PLAINTIFF: Cornealius Lopes, Teresa Lopes		
DEFENDANT: Fremont Freewheelers; Jason Sage; USA Cycling dba USCF, NORBA & USPRO; Jeff Wu; Bob Parker; Paul Chuck; Larry Upthegrove; Lloyd Rath, Technology Park, CB Ellison; <input checked="" type="checkbox"/> DOES 1 TO 20		
COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input checked="" type="checkbox"/> MOTOR VEHICLE <input type="checkbox"/> OTHER (specify): <input checked="" type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Other Damages (specify): Loss of Consortium		
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER: HG06260161

1. Plaintiff (name or names): Cornealius Lopes, Teresa Lopes

alleges causes of action against defendant (name or names): Fremont Freewheelers; (see attached-p.5

2. This pleading, including attachments and exhibits, consists of the following number of pages: 8

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

b. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE: Lopes v. Fremont Freewheelers, et al.

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): Fremont Freewheelers,(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☒ other (specify): non-profit organizationc. ☒ except defendant (name): Technology Park(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):b. ☒ except defendant (name): USA Cycling dba USCF, NORBA and USPRO(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):d. ☒ except defendant (name): CB Ellison(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1-20 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 1-20 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined pursuant to Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

SHORT TITLE: Lopes v. Fremont Freewheelers, et al.

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☒ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☒ Premises Liability
- f. ☒ Other (specify): Loss of Consortium

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☒ property damage
- f. ☒ loss of earning capacity
- g. ☒ other damage (specify): permanent scarring and loss of feeling in lower lip; loss of seven (7) permanent teeth; loss of consortium

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

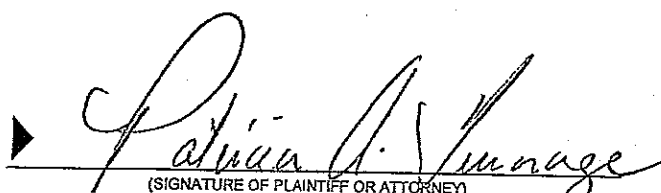
The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☒ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):
5(a)(5); 5(c)(1); 5(d)(1)

Date: March 14, 2006

Patricia A. Turnage
(TYPE OR PRINT NAME)


(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: Lopes v. Fremont Freewheelers, et al.

CASE NUMBER:

ATTACHMENT (Number): ONEPage 4 of 8

(This Attachment may be used with any Judicial Council form.)

(Add pages as required)

1
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4 1. (cont'd) other named defendants: Jason Sage, USA Cycling dba USCF, NORBA
5 & USPRO; Jeff Wu; Bob Parker, Paul Chuck, Larry Upthegrove; Lloyd Rath;
6 Technology Park, CB Ellison and Does 1 to 20.
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(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Lopes v. Fremont Freewheelers, et al.

CASE NUMBER:

FIRST

(number)

CAUSE OF ACTION - Motor Vehicle

Page 5

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

Plaintiff (name): Cornealius Lopes

MV-1. Plaintiff alleges the acts of defendants were negligent; the acts were the legal (proximate) cause of injuries and damages to plaintiff; the acts occurred on (date): June 12, 2004

at (place): Technology Park, 3900 Block of Eureka Street, Newark, California. Plaintiff further alleges that bicycles are subject to applicable statutes of the California Vehicle Code. As such the below-named bicyclists' conduct is governed by the California Vehicle Code. Plaintiff alleges that the below-named defendants violated the applicable provisions of the California Vehicle Code, which resulted in striking plaintiff, knocking him to the ground, and causing him to lose consciousness and to suffer physical and mental injury, all to his detriment.

MV-2. DEFENDANTS

a. ☒ The defendants who operated a motor vehicle are (names): Bob Parker, Paul Chuck, Larry Upthegrove, Lloyd Rath

☒ Does 1 to 8

b. ☐ The defendants who employed the persons who operated a motor vehicle in the course of their employment are (names):

☐ Does to

c. ☐ The defendants who owned the motor vehicle which was operated with their permission are (names):

☐ Does to

d. ☐ The defendants who entrusted the motor vehicle are (names):

☐ Does to

e. ☐ The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names):

☐ Does to

f. ☒ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are ☐ listed in Attachment MV-2f ☒ as follows:

Bob Parker, Paul Chuck, Larry Upthegrove, Lloyd Rath
Defendants' liability is based upon their negligent and careless operation of bicycles in executing "an attack" which resulted in defendants striking plaintiff, knocking him unconscious, proximately causing him physical injury to his body, shock to his nervous system, great emotional distress, and other damages, according to proof.

☒ Does 1 to 8

SHORT TITLE:

Lopes v. Fremont Freewheelers, et al.A

CASE NUMBER:

SECOND

(number)

CAUSE OF ACTION - General Negligence

Page 6

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): Cornealius Lopes

alleges that defendant (name): Fremont Freewheelers; Jason Sage; Jeff Wu; and USA Cycling dba USCF, NORBA & USPRO

☒ Does 9 to 16

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): June 12, 2004

at (place): Technology Park, 3900 Block of Eureka St., Newark, California

(description of reasons for liability):

Defendants, and each of them, knew that plaintiff was present and was jogging on what they deemed to be the course for the bicycle race, known as Fremont Freewheelers Criterium. At all times mentioned herein, defendants, and each of them, owed a duty of care to plaintiff not to place him in harm's way and not to conduct the race while he was on the course. Defendant Jason Sage, as an individual and acting on behalf of Fremont Freewheelers as a race promotor, Jeff Wu as referee, and all other defendants named herein decided to start the race while plaintiff was running on the course, knowing that it was dangerous to do so. Such conduct on the part of the defendants, and each of them, was negligent, careless and constitutes a breach of the duty of care. As a proximate result of the breach of duty of care by defendants, and each of them, plaintiff has been physically and emotionally injured, in his mind and his body, and has experienced pain and suffering, and has been damaged.

SHORT TITLE: Lopes v. Fremont Freewheelers, et al.

CASE NUMBER:

THIRD

(number)

CAUSE OF ACTION - Premises Liability

Page 7

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

Prem.L-1. Plaintiff (name): Cornealius Lopes

alleges the acts of defendants were the legal (proximate) cause of damages to plaintiff.

On (date): June 12, 2004

plaintiff was injured on the following premises in the following

fashion (description of premises and circumstances of injury):

As a member of the public, plaintiff was invited to come upon the premises and to jog through Technology Park, in Newark, California. At the time plaintiff jogged on the premises, a bicycle race, Fremont Freewheelers Criterium, was going on. The lack of written notice to plaintiff and to the public, the lack of barriers and cones to protect plaintiff from injury, created a dangerous condition on premises. As a proximate result of the existence of a dangerous condition on the premises, plaintiff was mowed down by bicyclists during the race, and suffered, *inter alia*, loss of consciousness, loss of seven permanent teeth, injury to his neck and back, permanent scarring and loss of feeling in his lower lip.

Prem.L-2. ☒ **Count One-Negligence** The defendants who negligently owned, maintained, managed and operated the described premises were (names): Technology Park, CB Ellison☒ Does 17 to 20Prem.L-3. ☒ **Count Two-Willful Failure to Warn** [Civil Code section 846] The defendant owners who willfully or maliciously failed to guard or warn against a dangerous condition, use, structure, or activity were (names): Technology Park☒ Does 17 to 20Plaintiff, a recreational user, was ☒ an invited guest ☐ a paying guest.Prem.L-4. ☒ **Count Three-Dangerous Condition of Public Property** The defendants who owned public property on which a dangerous condition existed were (names): Technology Park☒ Does 17 to 20a. ☐ The defendant public entity had ☐ actual ☐ constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it.b. ☐ The condition was created by employees of the defendant public entity.Prem.L-5. a. ☒ **Allegations about Other Defendants** The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names): CB Ellison☒ Does 17 to 20b. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for their liability are ☐ described in attachment Prem.L-5.b ☐ as follows (names):

SHORT TITLE: Lopes v. Fremont Freewheelers, et al.

CASE NUMBER:

ATTACHMENT (Number): Two

Page 8 of 8

(This Attachment may be used with any Judicial Council form.)

(Add pages as required)

FOURTH CAUSE OF ACTION ---LOSS OF CONSORTIUM---(As to all Named Defendants and Does 1 to 20)

On or about June 12, 2004, and at all relevant times mentioned herein, plaintiff, Teresa Lopes, was and is the spouse of plaintiff, Cornealius Lopes. As a proximate result of defendants', and each of them, negligent conduct, Cornealius Lopes was injured, both physically and emotionally. His injuries resulted in a loss of consortium to Teresa Lopes, his spouse, as she was deprived of the love, joy, comfort and society of her spouse, all to her detriment.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Exhibit E



FILED
ALAMEDA COUNTY

JUL 24 2007

CLERK OF THE SUPERIOR COURT

By Nancy A. Rose
Deputy

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CORNELIUS LOPES, TERESA LOPES,)

Plaintiffs,)

vs.)

FREMONT FREEWHEELERS, ET.AL.)

Defendants.)

-260161
Case No: HG062111

JUDGMENT ON JURY VERDICT

This action came on regularly for trial on June 22, 2007, in Department 511 of the Superior Court, the Hon. Harry Sheppard, Judge presiding; the plaintiffs appearing by attorney Patricia A. Turnage and the defendants appearing by attorneys David Dalby and David Winnett.

A jury of twelve persons was regularly impaneled and sworn. Witnesses were sworn and testified. After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court and the case was submitted to the jury with directions to return a verdict on special issues. The jury deliberated and thereafter returned into court with its verdict as follows:

The jury found by a preponderance of the evidence that Fremont Freewheelers, Jason Sage, Jeff Wu and Bob Parker were negligent. The jury found that Larry Upthegrove and Lloyd Rather were not negligent. As to the negligent defendants, the jury found by a preponderance of the evidence that Fremont Freewheelers', Jason Sage's, and Jeff Wu's negligence was each a

1 substantial factor in causing harm to plaintiff, Cornelius Lopes. The jury awarded Cornelius
 2 Lopes the sum of \$3,000.00 in lost earnings and \$14,000.00 in medical/dental expenses for a
 3 total sum of \$17,000.00 in total past economic damages. The jury awarded Cornelius Lopes the
 4 sum of \$5,000.00 in future medical/dental expenses, for a total of \$22,000.00 in past and future
 5 economic damages. The jury awarded Cornelius Lopes the sum of \$55,000.00 for past non-
 6 economic damages; i.e., physical pain, mental suffering, loss of enjoyment of life, disfigurement,
 7 physical impairment, inconvenience, grief, anxiety, humiliation and/or emotional distress. The
 8 jury awarded Cornelius Lopes the sum of \$20,000.00 for future non-economic damages; i.e.,
 9 general damages for future physical pain, mental suffering, loss of enjoyment of life,
 10 disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation and/or emotional
 11 distress. Total award to Cornelius Lopes is \$97,000.00.

12 The jury found by a preponderance of the evidence that Cornelius Lopes was 25% at fault
 13 for the accident, reducing his damage award to \$72,750.00 for his percentage of fault. The jury
 14 also found that the following shared responsibility for Cornelius Lopes' harm as follows:
 15 Fremont Freewheelers, 35%; Jason Sage, 25%; Jeff Wu, 12%; Bob Parker, 3%.

16 The jury found by a preponderance of the evidence that Teresa Lopes did not prove her
 17 loss of consortium claim and did not award her any damages.

18 It appearing by reason of said verdict that plaintiff, Cornelius Lopes, is entitled to
 19 judgment against defendants, Fremont Freewheelers, Jason Sage, Jeff Wu, and Bob Parker in
 20 the sum of \$72,750.00, ~~prejudgment interest at the rate of 7% from June 12, 2004 on the~~
 21 ~~unliquidated claim in the amount of \$ _____ and post judgment interest thereon at~~
 22 ~~the rate of ten percent (10%) per annum from the date of the entry of this judgment until paid,~~
 23 ~~together with costs and disbursements in the amount of \$ _____.~~

24 It appearing by reason of said verdict that: plaintiff, Cornelius Lopes is entitled to
 25 judgment against defendants,

26 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that said
 27 plaintiff, Cornelius Lopes, have and recover from said defendants ~~the sum of \$~~

28 ~~_____ with prejudgment interest thereon at the rate of seven percent (7%) per annum~~

the sum of \$72,750.00, and post-judgment interest thereon at the rate of ten percent (10%) per annum from the date of the entry of this judgment until paid, together with costs and ~~disbursements~~ in the amount of \$ _____.

It appearing by reason of said verdict that: plaintiff, Cornelius Lopes is entitled to judgment against defendants,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that said plaintiff, Cornelius Lopes, have and recover from said defendants the sum of \$ 72,750 and with interest thereon at the rate of ten per cent (10%) per annum from the date of entry of this judgment until paid, together with costs and ~~disbursements~~ in the amount of \$ _____.

Dated: July 24, 2007

Harry R. Sheppard
Harry Sheppard, Judge of the Superior Court

APPROVED AS TO FORM:

S D Cally
HINSHAW & CULBERTSON, LLP